

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 885

Introduced by Assembly Member Ammiano

February 22, 2013

An act to ~~amend~~ add Section ~~646.9~~ of 1127j to the Penal Code, relating to ~~stalking~~ *criminal procedure*.

LEGISLATIVE COUNSEL'S DIGEST

AB 885, as amended, Ammiano. ~~Stalking.~~ *Discovery: prosecutorial duty to disclose information.*

Existing law ~~provides that a person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat, as specified, is guilty of stalking, and may be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison. Existing law further provides that a person who engages in the above-described behavior when there is a temporary restraining order, injunction, or other court order in effect prohibiting the specified behavior against the same party, may be punished by imprisonment in the state prison for 2, 3, or 4 years.~~ *requires the prosecuting attorney to disclose to the defendant or his or her attorney certain materials and information, including statements of all defendants and any exculpatory evidence, as specified.*

~~This bill would make technical, nonsubstantive changes to those provisions.~~ *require a court in any criminal trial or proceeding in which the court has determined that there has been an intentional failure to disclose certain materials and information, as specified, to instruct the*

jury that the failure to disclose has occurred and that the jury may consider the failure as circumstantial evidence to support the presence of reasonable doubt.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1127j is added to the Penal Code, to read:*
2 *1127j. In any criminal trial or proceeding in which the court*
3 *determines that there has been an intentional failure to disclose*
4 *specified materials and information pursuant to Section 1054.1*
5 *or Brady v. Maryland (1963) 373 U.S. 83, the court shall instruct*
6 *the jury that the intentional failure to disclose the materials and*
7 *information occurred and that the jury may consider the failure*
8 *to disclose as circumstantial evidence to support the presence of*
9 *reasonable doubt.*

10 ~~SECTION 1. Section 646.9 of the Penal Code is amended to~~
11 ~~read:~~

12 ~~646.9. (a) A person who willfully, maliciously, and repeatedly~~
13 ~~follows or willfully and maliciously harasses another person and~~
14 ~~who makes a credible threat with the intent to place that person in~~
15 ~~reasonable fear for his or her safety, or the safety of his or her~~
16 ~~immediate family is guilty of the crime of stalking, punishable by~~
17 ~~imprisonment in a county jail for not more than one year, or by a~~
18 ~~fine of not more than one thousand dollars (\$1,000), or by both~~
19 ~~that fine and imprisonment, or by imprisonment in the state prison.~~

20 ~~(b) A person who violates subdivision (a) when there is a~~
21 ~~temporary restraining order, injunction, or other court order in~~
22 ~~effect prohibiting the behavior described in subdivision (a) against~~
23 ~~the same party, shall be punished by imprisonment in the state~~
24 ~~prison for two, three, or four years.~~

25 ~~(c) (1) A person who, after having been convicted of a felony~~
26 ~~under Section 273.5, 273.6, or 422, commits a violation of~~
27 ~~subdivision (a) shall be punished by imprisonment in a county jail~~
28 ~~for not more than one year, or by a fine of not more than one~~
29 ~~thousand dollars (\$1,000), or by both that fine and imprisonment,~~
30 ~~or by imprisonment in the state prison for two, three, or five years.~~

31 ~~(2) Every person who, after having been convicted of a felony~~
32 ~~under subdivision (a), commits a violation of this section shall be~~

1 ~~punished by imprisonment in the state prison for two, three, or~~
2 ~~five years.~~

3 ~~(d) In addition to the penalties provided in this section, the~~
4 ~~sentencing court may order a person convicted of a felony under~~
5 ~~this section to register as a sex offender pursuant to Section~~
6 ~~290.006.~~

7 ~~(e) For the purposes of this section, “harasses” means engages~~
8 ~~in a knowing and willful course of conduct directed at a specific~~
9 ~~person that seriously alarms, annoys, torments, or terrorizes the~~
10 ~~person, and that serves no legitimate purpose.~~

11 ~~(f) For the purposes of this section, “course of conduct” means~~
12 ~~two or more acts occurring over a period of time, however short,~~
13 ~~evidencing a continuity of purpose. Constitutionally protected~~
14 ~~activity is not included within the meaning of “course of conduct.”~~

15 ~~(g) For the purposes of this section, “credible threat” means a~~
16 ~~verbal or written threat, including that performed through the use~~
17 ~~of an electronic communication device, or a threat implied by a~~
18 ~~pattern of conduct or a combination of verbal, written, or~~
19 ~~electronically communicated statements and conduct, made with~~
20 ~~the intent to place the person that is the target of the threat in~~
21 ~~reasonable fear for his or her safety or the safety of his or her~~
22 ~~family, and made with the apparent ability to carry out the threat~~
23 ~~so as to cause the person who is the target of the threat to~~
24 ~~reasonably fear for his or her safety or the safety of his or her~~
25 ~~family. It is not necessary to prove that the defendant had the intent~~
26 ~~to actually carry out the threat. The present incarceration of a~~
27 ~~person making the threat shall not be a bar to prosecution under~~
28 ~~this section. Constitutionally protected activity is not included~~
29 ~~within the meaning of “credible threat.”~~

30 ~~(h) For purposes of this section, the term “electronic~~
31 ~~communication device” includes, but is not limited to, telephones,~~
32 ~~cellular phones, computers, video recorders, fax machines, or~~
33 ~~paggers. “Electronic communication” has the same meaning as the~~
34 ~~term defined in Subsection 12 of Section 2510 of Title 18 of the~~
35 ~~United States Code.~~

36 ~~(i) This section shall not apply to conduct that occurs during~~
37 ~~labor picketing.~~

38 ~~(j) If probation is granted, or the execution or imposition of a~~
39 ~~sentence is suspended, for a person convicted under this section,~~
40 ~~it shall be a condition of probation that the person participate in~~

1 counseling, as designated by the court. However, the court, upon
2 a showing of good cause, may find that the counseling requirement
3 shall not be imposed.

4 ~~(k) (1) The sentencing court shall also consider issuing an order~~
5 ~~restraining the defendant from any contact with the victim, that~~
6 ~~may be valid for up to 10 years, as determined by the court. It is~~
7 ~~the intent of the Legislature that the length of a restraining order~~
8 ~~be based upon the seriousness of the facts before the court, the~~
9 ~~probability of future violations, and the safety of the victim and~~
10 ~~his or her immediate family.~~

11 ~~(2) This protective order may be issued by the court whether~~
12 ~~the defendant is sentenced to state prison, county jail, or if~~
13 ~~imposition of sentence is suspended and the defendant is placed~~
14 ~~on probation.~~

15 ~~(l) For purposes of this section, "immediate family" means a~~
16 ~~spouse, parent, child, a person related by consanguinity or affinity~~
17 ~~within the second degree, or another person who regularly resides~~
18 ~~in the household, or who, within the prior six months, regularly~~
19 ~~resided in the household.~~

20 ~~(m) The court shall consider whether the defendant would~~
21 ~~benefit from treatment pursuant to Section 2684. If it is determined~~
22 ~~to be appropriate, the court shall recommend that the Department~~
23 ~~of Corrections and Rehabilitation make a certification as provided~~
24 ~~in Section 2684. Upon the certification, the defendant shall be~~
25 ~~evaluated and transferred to the appropriate hospital for treatment~~
26 ~~pursuant to Section 2684.~~